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September 20, 2011

Hon. Robert Young
Chief Justice
Michigan Supreme Court
3034 W Grand Blvd Ste 8-500
Detroit, MI 48202

Re: Administrative File 2010-13

Dear Chief Justice Young and Justices of the Court:

I do not intend to get into an extensive back-and-forth with my friend Ken Mogill regarding the proposed amendment, but as he *did* comment on my comments, turn about is fair play, and so a brief rejoinder.

One may reasonably assume that the proponents of the amendment intend it to change current procedure.

I am a "proponent" or supporter of the amendment, and I do not intend that it change current procedure. I intend that it put to an end current misconceptions concerning the applicability of MCR 6.201 before preliminary examinations (see Mr. Mogill's letter, and the comments of some others, referenced in my initial comments). I support the amendment because it would make absolutely clear that the extensive discovery mandated in MCR 6.201 is designed to occur before trial and in the circuit court, not in the 14 days before a preliminary examination.

Regardless of whether the right to discovery prior to preliminary examination is considered to be rooted in the court rules or case law, it is and has long been widely recognized and frequently relied upon in the state.

I don't argue otherwise; indeed, I make the point that a district court has authority to order discovery commensurate with the purpose of an examination before the examination (the case authority existed before MCR 6.201 was promulgated). It *does* make a difference whether the authority comes from

the court rule or from case law, because if the court rule applies it applies in its every jot and tittle, which cannot be true by its very terms.

It is also incorrect that the court rules do not current provide for discovery at the preliminary examination stage.

But if the "court rules" provide for discovery at the preliminary examination, they only do so through MCR 6.201, which means that on request of a party (discovery under the rule is reciprocal) *all* of the materials denominated in the rule must be supplied to the requesting party. Mr. Mogill does not answer how that can possibly be given the extensive nature of the rule, and that the deadline under the rule for compliance is "within 21 days of a request," when the examination is to be held within 14 days of arraignment on the warrant. The rule is not designed for nor written for pre-exam discovery.

Again, this is not to say no discovery can occur, or be ordered if necessary, before a preliminary examination. But MCR 6.201 is not applicable, and the extensive discovery designed to occur before trial under that rule need not occur in the 14 days before a preliminary examination, whether a party requests it or not.

As I said previously, perhaps there should be a rule on discovery before examinations and a rule on discovery before misdemeanor trials, and if they are proposed that conversation can occur.

Very truly yours,

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